SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 299

RUTHBELL COAL COMPANY, A CORPORATION,
Petitioner,

vs.

CLARA W. STANTON, ADMINISTRATRIX OF THE ESTATE OF ERNEST L. STANTON, DECEASED

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Opinions Below

The opinion of the trial court (R. 21-23) justifies upholding liability of petitioner:

(a) Because the sole reason for Federal control of the mine was to prevent a strike.

(b) Because since the former decrees of the courts on questions of Federal control of industries there has been: "Greatly changed membership of the various United States courts," and because of a "marked change in social philosophy since that time."

The Supreme Court of Appeals of West Virginia in its opinion, affirming the judgment below, holds in regard to Federal control:

(a) That the regulations issued from time to time showed the control was merely nominal.

(b) That one of said regulations provided that the mining companies should remain, during Federal control, subject to state and federal laws, and "The mining companies are deemed to remain subject to suit as heretofore."

(c) That as there was no liability on the Government it would be unjust to relieve the company from liability" (R. 21-23).

Jurisdiction

Jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States; the jurisdiction of this Court to protect the rights arising under the Fifth Amendment to the Constitution, and under Section 237 of the Judicial Code.

In the state courts petitioner contended that the act of the United States, taking from it all its real and personal property, its franchises and funds, and placing its business entirely under the management of the Secretary of the Interior and such subordinates as he might designate, whether officers of the Company or not, and further under special supervision of a Regional Bituminous Coal Manager, gave petitioner immunity from liability for anything done or omitted while its mine was under such control. That contention was denied by the trial court and by the judgment and opinion of the Supreme Court of Appeals of West Virginia.

Specification of Errors of the Supreme Court of Appeals of West Virginia

The Court Erred

(1) In holding that at the time Ernest L. Stanton was injured Peter Titchenell was "defendant's mine foreman,"

and that "The control which he had over decedent would render defendant responsible for his negligence."

(2) In its finding that the Federal control was only nominal.

(3) In attempting to pass on the right of plaintiff below to recover from the Government, and holding that no such right existed, as that matter was not before said Court for adjudication.

(4) In determining the issue by a construction of the regulations made from time to time by the Secretary of the Interior, being administrative orders issued, not by petitioner's officers, but by the power that had supplanted them. The issue should have been determined by a construction of the Executive Order and the Order No. 1809 issued by the Secretary of the Interior and of the telegram by the said Secretary to C. W. Craig, petitioner's president, by which Orders and telegram petitioner's mine was taken into the possession of the Government (R. 140, 151 & 142).

(5) In affirming the judgment of the circuit court.

Facts and Authorities Relied On

(1) Under the authority of the Executive Order the Secretary of the Interior issued Order No. 1809, which included petitioner's mine by its reference to Appendix A, and sent the telegram aforesaid to petitioner's president specifically taking charge of said mine, and thereby completely excluding petitioner from possession and control of any of its property or money, took the management of the mine and the disposition of its products from petitioner, and vested it in the Secretary. The authority given the Secretary to use petitioner's officers if he chose would not prevent his having exclusive control.

Telegraph Company v. *Poston*, 256 U. S. 662.

Petitioner was advised that all employers were "serving the Government of the United States" (R. 152), and that the operating manager and all employees "are serving their country," and that the mines were "operating for the United States." The notice to employers required to be posted, and which was posted, stated that "all of the officers and employees of the company are serving the Government of the United States." These things showed Federal control exclusively. Petitioner was not the operator of the mine, and can not constitutionally be held liable for what occurred in its operation.

Telegraph Company v. *Poston, supra;*
Telephone & Telegraph Company v. *Spring,* 280 Fed. 382.

Statement

To avoid repetition, the Court is respectfully referred to the statement in the petition under the heading "Summary Statement of Matters Involved," from which the facts will appear in full detail.

Immunity of Petitioner

The power of the President to make the order of May 1, 1943, is not questioned in either the opinion of the trial court (R. 21-23), or in that of the Supreme Court of Appeals of West Virginia. The authority of the Secretary of the Interior to make the order taking over practically all the mines in the United States, including that of petitioner, is not questioned.

Ernest L. Stanton when injured was not a servant of petitioner.

Argument

This Court has not decided the exact question now presented, and it is of national importance.

The trial court said, "The basic question is the effect of this Order as to the ownership of the mine, and the results thereof." ("This Order" meant Executive Order No. 9340.) The word "Ownership" is not there germane. Otherwise, it was a succinct statement of the question in issue.

The "ownership" of the mine remained in petitioner. The possession, control, management and operation of the mine itself, and the disposition of its products and control of all funds used in its operations, were specially assumed by the Secretary of the Interior.

The Supreme Court of Appeals of West Virginia, in its opinion, assumes that the possession and control were lawfully taken. There can be no doubt that the War power of the President was ample to justify the seizure of the mines.

Telephone Co. v. *South Dakota,* 250 U. S. 163.

It is not denied that petitioner's mine was seized by the Government. To sustain its judgment in affirming the judgment of the trial court, the Supreme Court of Appeals of West Virginia holds:

First. That the "Regulations" show the purpose of Federal control to be "The maintenance of full production of coal for the effective prosecution of the War."

Second. The Secretary would use the existing organizations.

Third. That the possession and control were to be "temporary."

Fourth. That Federal control was only "nominal."

Fifth. That the ownership of the mine continued to be in the Company.

Sixth. That the Regulations declared that the manager and the employed should serve as employees of the Company.

Seventh. That the Company, by the Regulations, remained subject to Federal and State laws.

We assert the purpose of the Government in seizing the mines is unimportant, the fact of the seizure is ALL important. Whatever the purpose, the result was to oust the Company from the control and management; to take away its authority and substitute that of the Secretary. The Company's officers were to continue the management "if the cooperation of the coal company can be secured." Assuming such cooperation, it should continue the operation "Conforming with such directions as the Government may issue."

It was optional with the Secretary whether he should use the personnel of the management, a matter of policy that in no way restricted his exclusive control of petitioner's mine.

However temporary the possession, it is admitted that Stanton was injured while such possession continued. To say that the control was only nominal is to assume that the President of the United States and the Secretary of the Interior were enacting a farce, and did not mean what they said. Whatever may have been any regulations, can not change the fact that every regulatory order was issued, not by petitioner, but by the Secretary of the Interior, acting in that capacity or as Solid Fuels Administrator for War.

We assume that Order 1809 meant what was said in the statement "All officers and employees of the Company are serving the Government of the United States."

Nominal control is not consistent with the telegram by which, on May 1, 1943, petitioner's president was made

"Operating Manager for the United States," and was required to declare that he and all other employees were serving their country, and that the mine was "operated for the United States" (R. 143). Nominal control is refuted by the notice required to be posted as aforesaid, which was a notice to all employees and others, and stated that "All officers and employees of the company are serving the Government of the United States" (R. 150).

The recital in the Regulations that the Company remained subject to suit neither made the petitioner more nor less subject thereto than it would have been regardless of such statement. That was a matter of judicial determination. If it referred to suits for acts under Federal control, it was a declaration refuted by the decisions of the courts, if it meant they were liable to suits. If by that recital it was meant that the Company was liable to suit for anything occurring before Federal control, it was a mere recognition of a liability that the courts would sustain regardless of the declaration.

In the same Regulation it is stated: "No Operating Manager or Regional Manager is authorized to bring suit, accept service or enter into any legal proceeding on behalf of the United States without specific directions from the Administrator (R. 163). This would seem to evidence the recognition by the Secretary that the Company would not be liable to suit for acts done under Federal control.

The same Regulations recited, "The possessory interest of the United States in the property of the companies is deemed to be protected by the criminal laws of the United States protecting United States property." This statement is a recognition of the Government's exclusive possession and control of the property, and right to protect such possession and control by the criminal laws relating to property owned by the Government.

No reason has been advanced for holding petitioner liable for acts occurring under Federal control that was not advanced in the suits above cited against telephone and telegraph companies, and the orders and regulations as to the control and management of said companies were strikingly similar to those affecting Federal control of coal mines. In the joint Resolutions of Congress authorizing the seizure of telephone and telegraph it was provided that the lines remained subject to the state laws as to taxation, and to State police regulations, etc.

The Executive Order taking possession of the ~~mines~~ lines gave authority to the Postmaster General to operate them through existing owners, managers, directors and officers of the companies.

We believe that *Telegraph Company* v. *Poston, supra,* is decisive of every issue in the case, and requires a reversal of the judgment complained of, for the reasons stated in the petition and in this brief, and respectfully ask that the writ of certiorari be granted.

Respectfully submitted,

F. E. Parrack,
Counsel for Petitioner.